

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSE CARLOS OLIVEIRA-
COUTINHO,

Petitioner,

vs.

SCOTT FRAKES, NDCS Director;

Respondent.

8:19CV491

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner's Motion for Leave to Proceed in Forma Pauperis ("IFP"). ([Filing No. 6.](#)) Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 fee. [28 U.S.C. § 1914\(a\)](#). The court has reviewed the application to proceed IFP pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#). Petitioner's trust account information shows that Petitioner's account contained an average monthly balance of \$100 or more for the six-month period immediately preceding the filing of the petition. ([Filing No. 8.](#)) Thus, the court concludes that Petitioner must be required to pay the \$5.00 filing fee because he has the financial ability to do so. *See* [28 U.S.C. § 1915\(a\)](#). No further review of this case will take place until the fee is paid.¹

IT IS THEREFORE ORDERED that:

1. Petitioner's request to proceed IFP ([filing no. 6](#)) is denied.

¹ With his motion to proceed IFP, Petitioner filed a document titled "Notice to the Court" in which he stated that he requested the Tecumseh State Correctional Institution ("TSCI") Inmate Accounting to issue a check for \$5.00 payable to the court and mail the check with his habeas petition. ([Filing No. 5.](#)) Petitioner states "[t]hat as of December 5th, 2019, Petitioner does not know where the \$5.00 went." (*Id.*) The court has confirmed with the clerk's office that no payment has been received from Petitioner in this case.

2. Petitioner must pay the \$5.00 filing fee within 30 days. Petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice.

3. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **January 29, 2020**: deadline for Petitioner to pay \$5.00 filing fee.

4. No further review of this case will take place until the filing fee is paid.

Dated this 30th day of December, 2019.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge